

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SOLAR TRUST OF AMERICA, LLC, *et al.*,
a Delaware limited liability company,

Debtors.¹

Chapter 11

Case No. 12-[] ([])

(Joint Administration Requested)

**EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 362, AND 364, AND (II) SCHEDULING
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c)**

The above captioned debtors and debtors-in-possession (collectively, the “Debtors”), hereby respectfully submit this emergency motion (this “Motion”) for entry of an interim order (the “Interim DIP Order” attached hereto as Exhibit 1) and a final order (the “Final DIP Order”): (i) authorizing the Debtors to obtain postpetition financing pursuant to section 364 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”); and (ii) scheduling a final hearing to approve such financing on a permanent basis pursuant to Rules 4001(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtor relies upon and incorporates by reference the First Day Declaration (defined below). In further support of the Motion, the Debtors respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this

¹ The Debtors in these chapter 11 cases, and the last four digits of their employer tax identification number, are: Solar Trust of America, LLC (4430), STA Development, LLC (9964), STA Contracting, LLC (8039), Amargosa Valley Solar I, LLC (2615), Amargosa Valley Solar II, LLC (0481), Palo Verde Solar I, LLC (1503), Palo Verde Solar II, LLC (1587), Palen Solar I, LLC (1669), Palen Solar II, LLC (1728), CA Solar 10, LLC (1779), and Solar Millennium, Inc. (9886). The corporate headquarters address for the Debtors is 1111 Broadway, 5th Floor, Oakland, California 94607.

Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is sections 105(a), 362, 364, 503 and 507 of the Bankruptcy Code.

General Background

2. On April 2, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors are operating their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

4. A description of the Debtors’ business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the Court to allow for a smooth transition into Chapter 11 are set forth in the Declaration of Edward Kleinschmidt in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), filed on the Petition Date.

The Debtors Liquidity Needs and Proposed DIP Financing

5. The Debtors are development companies that do not generate current revenues; thus, the Debtors have historically been dependent on funding from their ultimate corporate parents, particularly Solar Millennium AG (“SMAG”), to finance the ongoing costs of project development and general corporate overhead expenses. On December 21, 2011, however, SMAG announced the initiation of insolvency proceedings in Germany. Since that time, SMAG has been under the control of a German insolvency administrator, Volker Boehm (the “German Administrator”), and has ceased to provide any funding whatsoever to the Debtors. As a result of the liquidity constraints imposed by SMAG’s own financial difficulties, the Debtors placed their development efforts on hold and began focusing on cost-reductions and the preservation of their assets as a going-concern.

6. In the months leading up to SMAG's insolvency, SMAG had been in the process of negotiating with solarhybrid AG ("SHAG") to acquire SMAG's ownership interest in the Debtors. Ultimately, SHAG and SMAG came to terms on an acquisition transaction and executed a purchase and sale agreement in January 2012, which was scheduled to close in February 2012. As part of that transaction, SHAG agreed to provide funding to the Debtors, and SHAG ultimately provided the Debtors with \$2.2 million. However, SHAG's financial condition prevented the acquisition transaction from being consummated, and SHAG petitioned for relief under German insolvency laws in March, 2012.

7. Because of the abrupt cessation in funding to the Debtors, first from SMAG and then from SHAG, and the absence of any other revenue source, the Debtors were placed into an immediate liquidity crisis. Indeed, the Debtors have minimal cash and, as discussed more fully in the First Day Declaration, are faced with substantial funding obligations coming due in the first week of April, 2012.

8. The Debtors and SMAG continued discussions with several strategic parties regarding potential acquisition and financing transactions that would allow the Debtors to implement their development projects. The Debtors ultimately received one financing proposal from NextEra Energy Resources, LLC ("NextEra") that contemplated both financing – through the proposed DIP Facility (defined below) – and NextEra serving as a bidder in a potential acquisition of one or more of the Debtors' solar power projects.²

² As of the Petition Date, the Debtors and NextEra are still in discussion regarding the terms and documentation of a proposed asset acquisition.

Relief Requested

9. By this Motion, the Debtors request entry of the Interim Order³ and the Final Order authorizing and approving:

- a. Solar Trust of America, LLC (“STA”) and Palo Verde Solar II, LLC (“PVS II” and, together, the “Borrowers”) to obtain postpetition financing (the “Financing”), and for all of the other Debtors (the “Guarantors”, together with the Borrowers, the “Loan Parties”) to guaranty the Borrowers’ obligations in connection with the Financing, consisting of:
 - i. the extension of new term loans (the “Working Capital Loans”) not to exceed US \$3,900,000 in the aggregate (the “Working Capital Commitment Amount”), pursuant to a senior secured superpriority debtor-in-possession term loan facility (the “Working Capital Facility”), with NextEra acting as Administrative Agent (in such capacity, the “Administrative Agent”) and the various lenders thereunder acting as lenders (the “Lenders”); and
 - ii. the extension of new loans and the arrangement for the issuance of a letter of credit in an aggregate amount of US \$18,400,000 (the “PT Security Loan” and the “PT Security Letter of Credit” and, together with the Working Capital Loans, the “Loans”), pursuant to a senior secured superpriority debtor-in-possession letter of credit facility (the “PT Security Facility” and, together with the Working Capital Facility, the “DIP Facility”) with Square Lake Holdings, Inc. acting as arranger (in such capacity, the “PT Security L/C Arranger”);
- b. (i) the borrowings pursuant to the terms and conditions substantially in the form of that certain senior secured superpriority debtor-in-possession credit agreement (the “Credit Agreement”), a copy of which is attached as Exhibit A to the Interim DIP Order, among the Loan Parties, the Administrative Agent and the Lenders, and any documents executed in connection therewith (the “Loan Documents”), and (ii) authorize the Loan Parties to execute and deliver, from time to time, all such documents, instruments and agreements, and perform other such acts as may be required, necessary or desirable in connection with the Credit Agreement, including, without limitation, the payment of all fees, interest and charges required under the Credit Agreement;
- c. the granting to the Lenders of the Financing Liens in all existing and after acquired real and personal, tangible and intangible, property of the Loan Parties, including, without limitation, upon entry of the Final Order, commercial tort

³ Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Interim DIP Order or the Credit Agreement (as defined herein).

claims, all causes of action of the Loan Parties arising under chapter 5 of the Bankruptcy Code and any and all proceeds thereof;

- d. the granting to the Lenders, in accordance with section 364(c)(1) of the Bankruptcy Code, superpriority administrative expense claim status in respect of all amounts owing by the Loan Parties under the Credit Agreement, having priority over all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (“Superpriority”), subject only to the Carve-Out;
- e. among other things, (i) authorizing STA, on an interim basis, to borrow up to an aggregate principal or face amount to be determined in Working Capital Loans (the “Initial Working Capital Commitment Amount”) through and including the date of the Final Hearing and (ii) authorizing the Guarantors to guaranty the DIP Facility as to each Borrower, at the interim hearing (the “Interim Hearing”) on the Motion;
- f. the scheduling of a final hearing on the Motion (the “Final Hearing”) to be held within twenty-one (21) days of the Petition Date to consider entry of the Final Order authorizing a senior secured superpriority debtor-in-possession loan facility acceptable to the Administrative Agent in its sole discretion containing all of the relevant terms and conditions of the Credit Agreement and any additional terms requested by the Administrative Agent not inconsistent with the Credit Agreement (the “Final DIP Agreement”) and the form of notice as to the Final Hearing; and
- g. such further relief as is just and proper.

A. Material Terms of the Proposed DIP Financing

10. Pursuant to Bankruptcy Rule 4001, the Debtors set forth significant elements of the DIP Facility, as follows:

Administrative Agent	NextEra Energy Resources, LLC.
Lenders	Initially, NextEra Energy Resources, LLC and certain other lenders.
PT Security L/C Arranger	Square Lake Holdings, Inc.
PT Security Issuing Bank	TBD
Borrowers	STA and PVS II.
DIP Guarantors	Each of the Debtors, excluding STA and PVS II
Working Capital	The Lenders shall provide STA with a delayed-draw term loan facility

Facility	<p>providing for extension of the Working Capital Loans not to exceed US \$3,900,000 in the aggregate with an initial availability to be determined. The commitment of Lenders to fund the Working Capital Commitment Amount will expire on the Maturity Date.</p> <p>On the Closing Date (as defined below), and subject to the terms of the Credit Agreement, the Initial Working Capital Commitment Amount shall be available to the Borrowers in an amount necessary to pay transaction costs, adequate protection payments, and other amounts then due and payable in accordance with the DIP Budget, in each case, for which cash then held by the Debtors is not then available to pay.</p> <p>Upon the entry of the Final Order by the Court, and subject to the terms of the Credit Agreement, an amount not to exceed the Working Capital Commitment Amount (less any Working Capital Loans made on the Closing Date and remaining outstanding) shall be available to STA as set forth in the DIP Budget.</p>
PT Security Facility	<p>The PT Security L/C Arranger shall use commercially reasonable efforts to procure from the PT Security Issuing Bank a letter of credit (the “<u>PT Security Letter of Credit</u>”) in the amount of US \$18,400.000 (such amount, the “<u>PT Security Loan Commitment</u>”) on behalf of PVS II.</p> <p>Upon issuance of the PT Security Letter of Credit, each Lender shall automatically be granted a participation in the PT Security Letter of Credit equal to each such Lender’s Pro Rata Share of the PT Security Loan Commitment.</p> <p>The PT Security L/C Arranger shall have no liability to any Loan Party, Debtor or Lender if it fails to obtain the PT Security Letter of Credit. In the event that the PT Security L/C Arranger fails to obtain the PT Security Letter of Credit, the Lenders shall make PT Security Loans to PVS II, in an aggregate amount up to, but not exceeding, the PT Security Loan Commitment.</p> <p>If the PT Security L/C Arranger makes any payment in respect of the PT Security Letter of Credit, PVS II shall reimburse the PT Security L/C Arranger by paying to the PT Security L/C Arranger an amount equal to such L/C Reimbursement Obligation not later than 3:00 p.m., New York City time, on the date that such L/C Reimbursement Obligation is paid by the PT Security L/C Arranger if PVS II shall have received notice of such payment prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by PVS II prior to such time on such date, then not later than 3:00 p.m., New York City time, on the Business Day immediately following the</p>

	day that Borrower receives such notice.
Mandatory Prepayment	Mandatory prepayment of the Loans shall be made from 100% of the net cash proceeds received from (i) any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of a Loan Party or any of its respective subsidiaries, (ii) all asset sales made by a Loan Party or any of its respective subsidiaries, and (iii) any unrestricted cash accumulated by a Loan Party or any of its respective subsidiaries.
Closing Date	The date on which all conditions precedent set forth in Section 3.1 of the Credit Agreement are satisfied or waived.
Maturity Date	The Loans outstanding under the DIP Facility will be immediately due and payable upon the earliest of (i) the date that is five months after the Closing Date (or such later date as may be agreed to in writing by the Lenders in their sole and absolute discretion) and (ii) the date on which the Obligations become due and payable following an Event of Default.
Purpose and Use of Proceeds	<p>The Working Capital Facility shall be used by the Borrowers solely to (i) pay the fees and expenses incurred in connection with the transactions contemplated by the Credit Agreement, (ii) fund working capital and other general corporate purposes of the Loan Parties during the pendency of these Cases, (iii) fund the costs and expenses incurred in connection with the administration and prosecution of these Cases, in each case, in compliance with the DIP Budget, and (iv) as otherwise permitted by the Credit Agreement.</p> <p>The PT Security Letter of Credit or the proceeds of each PT Security Loan, as applicable, shall be used or applied, as applicable, by PVS II solely as PT Security.</p>
Interest Rate	<p>Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) at the LIBOR Rate plus the Applicable Margin.</p> <p><u>Applicable Margin:</u> 8.00% per annum.</p> <p>If the LIBOR Rate cannot be determined or it would otherwise be impermissible under the Credit Agreement, then interest would accrue at the Prime Rate plus the Applicable Margin.</p> <p>Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Loans outstanding shall thereafter bear interest payable upon demand, at a rate that is 2.00% per annum</p>

	in excess of the interest rate otherwise payable for the Loans.
Interest Payments	Except as otherwise set forth in the Credit Agreement, interest on each Loan shall be payable upon the earlier of (i) the date of mandatory prepayment as a result of the sale of certain assets and (ii) the Maturity Date.
DIP Upfront Fee	The Borrowers shall pay the Administrative Agent, on behalf of the Lenders, an upfront fee on the first Payment Date in the amount of \$143,000.
L/C Ticking Fee	PVS II shall pay to the Administrative Agent, for the account of the Lenders on a pro rata basis, a fee equal to 3.00% per annum of the average daily undrawn stated amount of the PT Security Letter of Credit from the date of issuance of the PT Security Letter of Credit until the date on which the PT Security Letter of Credit is fully drawn upon or terminated (whether by instruction from the beneficiary or by expiration in accordance with its terms), which fee (i) shall be calculated on the actual number of days elapsed and a year of 360 days and (ii) shall be payable to the Administrative Agent no later than the first Payment Date.
Security	Pursuant to section 364(c)(2), the Administrative Agent, on behalf of the Lenders, shall be entitled to fully perfected first priority, valid, binding, enforceable, non-avoidable and automatically perfected, security interests in and liens upon all existing and after acquired real and personal, tangible and intangible, property of the Debtors, existing, or acquired prior or subsequent to the commencement of the Cases (the “ <u>Financing Liens</u> ”), including, but not limited to, upon entry of the Final Order, all causes of action arising under Chapter 5 of the Bankruptcy Code, and any and all proceeds thereof, (the “ <u>Collateral</u> ”), which shall be subject to (i) non-avoidable, valid, enforceable and perfected liens that are in existence on the Petition Date and (ii) non-avoidable, valid, enforceable liens of landlords, banks (including rights of set off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other liens imposed by law, in each case incurred in connection with the construction of the Blythe Project for amounts (a) not yet overdue or (b) that are overdue and that are being contested in good faith by appropriate proceedings, so long as reserves or other appropriate provisions, if any, required by GAAP shall have been made for such amounts (collectively, “ <u>Permitted Liens</u> ”).
Super-Priority Claim	Pursuant to section 364(c)(1) of the Bankruptcy Code, all amounts owing by the Debtors under the DIP Facility in respect thereof at all times will constitute allowed superpriority administrative expense claims in the Debtors’ respective Cases, having priority over all

	administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject to indebtedness secured by Permitted Liens in favor of a party other than the Administrative Agent or the Lenders in their capacities as such and the Carve-Out (as defined below).
Carve-Out	<p>As used in this Interim Order, “<u>Carve-Out</u>” means: (i) all fees required to be paid to the Clerk of the Bankruptcy Court; (ii) all statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c); (iii) all accrued and unpaid fees, disbursements, costs and expenses incurred by professionals retained by the Debtors or a Committee, if any, (the “<u>Case Professionals</u>”), to the extent allowed at any time, through the date of service by the Administrative Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals after the date of service of a Carve Out Trigger Notice, to the extent allowed at any time, in an aggregate amount not to exceed \$150,000 (such amount being the “Fee Cap”). The Carve-Out shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals. All retainers and any other property of the estate (other than property subject to a Lien in favor of the Administrative Agent and the other Secured Parties) shall be used to pay any allowed fees and expenses of the Case Professionals before any payment of such fees and expense are made from the DIP Facility or any Collateral.</p> <p>For purposes of the foregoing, “<u>Carve Out Trigger Notice</u>” shall mean a written notice delivered by the Administrative Agent to the Debtors and their counsel, the U.S. Trustee, and lead counsel to any Committee, which notice may be delivered following the occurrence of any Event of Default (as defined below).</p> <p>Prior to service of a Carve-Out Trigger Notice, the Debtors are authorized, on the first business day of each week covered by the DIP Budget, to deposit, into an escrow account (the “<u>Professional Expense Escrow</u>”) maintained by counsel for the Debtors, an amount equal to the projected aggregate amount of weekly “<u>Allowed Professional Fees</u>” set forth in the DIP Budget for such weekly period. If a Committee is formed, then counsel to such Committee shall maintain an escrow for the professionals engaged by the Committee.</p>
Events of Default	<p>If any of the following events (“<u>Events of Default</u>”) shall occur:</p> <p>a. the Borrowers shall fail to pay any Obligation when and as the same shall become due and payable, whether at the due date thereof</p>

	<p>or at a date fixed for prepayment thereof or otherwise;</p> <p>b. any Borrower or any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in Section 7.1(a) of the Credit Agreement) payable under the Credit Agreement, when and as the same shall become due and payable, and such failure, in the case of interest on any Loan or any fee described in Section 2.6(b) of the Credit Agreement, shall continue unremedied for a period of three (3) Business Days and, in the case of any other amount, shall continue unremedied for a period of ten (10) days following the written demand by the Administrative Agent to the Borrowers for such payment;</p> <p>c. any representation or warranty made or deemed made by or on behalf of any Borrower or any other Loan Party in writing in connection with the Credit Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification of the Credit Agreement or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;</p> <p>d. any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.1(i), 5.1(j), 5.1(k), 5.1(n), 5.2 (with respect to the existence of any Loan Party), 5.3, 5.6, 5.8, or Article VI of the Credit Agreement;</p> <p>e. any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in the Credit Agreement (other than those specified in clauses (a), (b) or (d) of this paragraph 12) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from the Administrative Agent to the Borrowers (which notice will be given at the request of any Lender);</p> <p>f. one or more judgments arising postpetition for the payment of money in an aggregate amount in excess of \$100,000 shall be rendered against any Borrower, any other Loan Party or any combination thereof and the same shall remain undischarged for a period of fifteen (15) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment;</p> <p>g. except for any event of default caused by the filing of these Cases (i) the occurrence of any condition or event that (A) constitutes</p>
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	<p>an event of default under any Material Agreement (B) gives the counterparty to a Material Agreement the right to terminate such Material Agreement or (C) gives the Governmental Authority that has issued any Project Permit the right to revoke, rescind, withdraw or otherwise terminate or suspend the effectiveness of such Project Permit, (ii) the failure of any Material Agreement to be valid, enforceable and in full force and effect, or (iii) the failure of any Project Permit to be validly issued, or (iv) any Project Permit is revoked, rescinded, withdrawn or otherwise terminated or ceases to be in full force and effect, if such revocation, rescission, withdrawal, termination or cessation could reasonably be expected to have a Material Adverse Effect;</p> <p>h. an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;</p> <p>i. any Collateral Document shall (i) cease to be in full force and effect or shall be declared null and void, (ii) be repudiated by any Loan Party or any Loan Party contests the validity or enforceability thereof or (iii) for any reason fail to create a Lien in any portion of the Collateral purported to be covered thereby having the validity, perfection and priority set forth in the Collateral Documents;</p> <p>j. (i) STA or any of its Subsidiaries fails to own, directly or indirectly, 100% of the outstanding Capital Stock of each of their respective Subsidiaries, (ii) STA Development, LLC fails to own directly at least 25% of the outstanding Capital Stock of CA Solar 10, LLC or (iii) SMI fails to own directly at least 70% of the outstanding Capital Stock of STA;</p> <p>k. the Bankruptcy Court fails to enter a Final DIP Order within 21 days of the Petition Date;</p> <p>l. Entry of an order by the Bankruptcy Court without the prior consent of the Administrative Agent reversing, vacating, staying, or otherwise amending, supplementing or modifying the DIP Order (or any Debtor shall apply for authority to do so) or otherwise affecting in any material respect the Credit Agreement or any other Loan Document, and such order shall not have been reversed or vacated within five days;</p> <p>m. entry of an order granting any relief from or modifying the automatic stay to allow any creditor to execute upon or enforce a Lien in any Debtor's asset (unless the Administrative Agent shall have</p>
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	<p>granted prior written consent to such relief);</p> <p>n. a motion shall be filed seeking to (i) dismiss any of the Cases, (ii) convert any of the Cases to a case under chapter 7 of the Bankruptcy Code or (iii) appoint a chapter 11 trustee or an examiner or responsible officer for the operation of the Debtors' business (in any case, with expanded powers relating to such operation), and any such motion is not (A) actively opposed by the Debtors and (B) rejected or overruled by this Court within 21 days of its filing;</p> <p>o. entry of an order (i) dismissing any of the Cases, (ii) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code or (iii) appointing a chapter 11 trustee or an examiner or responsible officer for the operation of Debtors' business (in any such case, with expanded powers relating to such operation), and any such order shall not have been reversed or vacated within ten days;</p> <p>p. unless the Administrative Agent shall have consented thereto (i) any Debtor shall file or support a plan of reorganization in these Cases which does not contain a provision for termination of the Commitments, payment in full in cash of all Obligations and replacement and termination of the PT Security Letter of Credit on or before the effective date of such plan or (ii) entry of an order confirming a plan of reorganization in these Cases which does not contain provisions for termination of the Commitments and payment in full in cash of all Obligations, replacement and termination of the PT Security Letter of Credit and the release of the Administrative Agent and Lenders in full from all claims of the Debtors on or before the effective date of such plan upon entry thereof;</p> <p>q. any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by a court order from continuing to conduct all or any material part of the business affairs of Borrowers or their Subsidiaries, either taken as a whole or with respect to any Project;</p> <p>r. any motion shall be filed seeking approval of any other Superpriority Claim in these Cases (other than the Carve-Out) which is <i>pari passu</i> with or senior to the claims of any of the any of the Administrative Agent, the PT Security L/C Arranger or the Lenders, unless after giving effect to the transactions contemplated by such motion all Obligations of any Loan Party under the Loan Documents (other than contingent indemnification and reimbursement Obligations in respect of which no claim for payment has been asserted by the Person entitled thereto) shall be paid in full in cash, all Commitments shall be terminated and the PT Security Letter of Credit</p>
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	<p>shall be released and terminated;</p> <p>s. any motion shall be filed seeking (i) to obtain additional financing under Section 364 of the Bankruptcy Code and to use cash collateral of the Lenders under Section 363(c) of the Bankruptcy Code without the consent of the Administrative Agent, (ii) to recover from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (iii) to take any other action adverse to any of the any of the Administrative Agent, the PT Security L/C Arranger or the Lenders, or their rights and remedies under the Credit Agreement or any of the other Loan Documents;</p> <p>t. entry of an order limiting or restricting the right of the Administrative Agent to Credit Bid.</p>
Proceeds of Subsequent Financing or Sale	<p>If at any time prior to the repayment in full of all obligations arising under the DIP Facility, including subsequent to the confirmation of any plan in the Cases, any of the Loan Parties, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur debt pursuant to section 364(b), 364(c) or 364(d) of the Bankruptcy Code in violation of the terms of the Interim Order or the Final Order or shall receive proceeds from a sale of Collateral pursuant to section 363(b) of the Bankruptcy Code, or from a sale of any other Collateral after the satisfaction of liens that are senior to the Administrative Agent's, then all of the cash proceeds derived from such credit, debt, or sale shall immediately be turned over to the Administrative Agent and applied to reduce the outstanding Working Capital Facility and the outstanding PT Security Facility <u>pari passu</u>, with any excess proceeds to be applied to cash collateralize the Working Capital Facility and the PT Security Facility <u>pari passu</u>.</p>
Surcharge Waivers	<p>Upon entry of a Final Order, (i) the Administrative Agent and the Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Lenders with respect to proceeds, products, offspring or profits of any of the Collateral and (ii) no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the Collateral, the Administrative Agent, the Lenders or any of their respective claims pursuant to Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the Administrative Agent or the Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by the Administrative Agent or any</p>

	of the Lenders.
Administrative Agenda and Lenders' Fees and Expenses	Upon ten (10) days' notice to the Debtors, any Committee and the Office of the United States Trustee, the Debtors shall be authorized and directed, without further order of the Court, to (i) pay any and all fees agreed and required to be paid to the Administrative Agent or the Lenders, as applicable, in connection with the consummation of the DIP Facility as referenced in the Credit Agreement and (ii) reimburse the Administrative Agent for all reasonable out-of-pocket costs and expenses incurred in connection with the transactions contemplated by the Credit Agreement, including, without limitation, related due diligence and preparation, negotiation, execution, delivery, administration and enforcement of the definitive documentation and ongoing expenses related to the DIP Facility and the Cases, including attorney and advisor fees and expenses.
Sale Milestones and Bid Procedures	<ol style="list-style-type: none"> 1. Immediately upon the Petition Date, the Debtors shall be permitted to market some or all of the Debtors' assets. 2. No later than April 4, 2012, the Debtors shall have filed motions reflecting the requirements of Section 5.3 with the Bankruptcy Court (the "Bidding Procedures Motions") to establish bid procedures for a sale of the Blythe Project and of the other Projects under section 363 of the Bankruptcy Code (the "363 Sales") ; 3. No later than April 27, 2012, the Bankruptcy Court shall have entered the orders reflecting the requirements of Section 5.3 approving the Bidding Procedures Motions (the "Bidding Procedures Orders"), which will provide, among other things, that objections to and bids in respect of the 363 Sales will be submitted no later than May 3, 2012; 4. No later than May 3, 2012, bidding with respect to the 363 Sales shall have occurred in accordance with the Bidding Procedures Orders; 5. No later than May 4, 2012, the Bankruptcy Court shall have conducted a hearing and entered orders, in form and substance satisfactory to the Administrative Agent approving the 363 Sales as contemplated under the Bidding Procedures Orders; 6. No later than May 14, 2012, the 363 Sales shall be completed.

B. Supplemental Bankruptcy Rule 4001 and Local Rule 4001-2 Disclosures

11. Section 506(c) Surcharge Waiver: Bankruptcy Rule 4001(c)(1)(B)(x) and Delaware Local Rule 4001-2(a)(i)(C) require disclosure of provisions in financing motions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code. Although the DIP Facility contemplates that the DIP Loan Documents and Final Order will provide for a waiver of rights under section 506(c) of the Bankruptcy Code, such rights will not be waived in the Interim Order. The proposed waiver of the Debtors' and estates' rights under section 506(c) of the Bankruptcy Code will be effective only after notice to parties in interest and entry of the Final Order granting such relief. See Interim Order at ¶ 21.

12. Liens on Avoidance Actions: Bankruptcy Rule 4001(c)(1)(B)(xi) and Delaware Local Rule 4001-2(a)(i)(D) require disclosure of provisions in financing motions that grant the prepetition secured creditor liens on Avoidance Actions. Although the DIP Facility and Final Order contemplate that DIP Lenders will be granted liens on Avoidance Actions or the proceeds thereof, such liens are not granted in the Interim Order. See Credit Agreement § 2.19(n). The liens against Avoidance Actions will be granted only after notice to parties in interest and entry of the Final Order granting such relief. See Credit Agreement § 2.19(n).

13. The provisions of the DIP Facility as to which disclosure is required pursuant to Delaware Local Rule 4001-2 are justified under the circumstances of these Chapter 11 Cases. First and foremost, without the inclusion of such terms; the DIP Lenders would not agree to make the DIP Facility available to the Debtors. In light of the unavailability of adequate financing alternatives and for the reasons set forth herein, the Debtors have determined in the exercise of their sound business judgment that agreeing to the terms of the postpetition financing described in this Motion is appropriate under the circumstances of these Chapter 11 Cases.

14. Accordingly, the facts and circumstances of these Chapter 11 Cases justify the inclusion of the terms that require disclosure under Delaware Local Rule 4001-2.

Basis for Relief Requested

15. For the following reasons, the Debtors respectfully submit that they have satisfied the standards applicable for approval of the DIP Facility.

A. The DIP Facility Should Be Approved Under Section 364 Of The Bankruptcy Code.

16. The Debtors propose to obtain financing under the DIP Facility by providing security interests and other liens as set forth above pursuant to sections 364(c) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that the debtor is “unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code].” 11 U.S.C. § 364(c). Indeed, section 364(c) financing is appropriate when the debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. See In re YL West 87th Holdings I LLC, 423 BR 421, 441 (Bankr. S.D.N.Y. 2010) (“Courts have generally deferred to a debtor’s business judgment in granting section 364 financing”); In re Ames Dep’t Stores. Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under Sections 364(a) and (b) of the Bankruptcy Code); In re Crouse Group, Inc., 71 B.R. 544, 549 (Banks. E.D. Pa. 1987) (secured credit under Section 364(e)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

17. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under Section 364(b), *i.e.*, by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

Ames Dep't Stores, 115 B.R. at 37-39.

18. During the prepetition period, the Debtors, both directly and through their advisors, endeavored to identify potential sources of financing and strategic alternatives outside of bankruptcy. Based on that process, the Debtors have determined that adequate financing on an unsecured basis is not available. Without postpetition financing, the Debtors would not be able to fund these Chapter 11 Cases and a chapter 11 sale process. Such a course of action would significantly impair the value of the Debtors' assets to the detriment of all stakeholders. By obtaining postpetition financing, the Debtors will be able to maximize the value of their assets for the benefit of all stakeholders through the conduct of an orderly chapter 11 sale process of the Debtors' assets on a going-concern basis. Finally, the terms of the DIP Facility are fair, reasonable and adequate given the Debtors' circumstances, all as more fully set forth below.

1. No Adequate Alternative to the DIP Facility is Currently Available.

19. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by Sections 364(c) of the Bankruptcy Code. In re YL West 87th Holdings I LLC, 423 BR 421, 441 (Bankr. Court, S.D.N.Y. Jan. 13, 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing"); In re General Growth Properties, Inc., 412 B.R. at 125 (debtor

has an obligation to make “reasonable efforts, under the circumstances . . .to obtain [unsecured financing], in the ordinary course of business or otherwise”).

20. In the weeks and months prior to the commencement of these Chapter 11 Cases, the Debtors explored strategic alternatives, including obtaining financing from a number of potential strategic parties. The Debtors’ only alternative to the DIP Facility – the SHAG acquisition – could not be consummated because of SHAG’s insolvency. As a result, the DIP Facility is the Debtors’ sole option for postpetition financing.

21. Accordingly, the Debtors have satisfied the requirement of Sections 364(c) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors.

2. The DIP Facility is Necessary to Preserve Estate Assets and is an Exercise of the Debtor’s Sound Business Judgment.

22. A debtor’s decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. See, e.g., Trans World Airlines, Inc. v. Travellers Int’l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment.”); Ames Dep’t Stores, 115 B.R. at 38 (noting that other decisions under section 364 find that financing reflects a debtor’s business judgment). Generally, the business judgment standard requires that, absent evidence to the contrary, a debtor-in-possession is afforded discretion to act with regard to business decision-making. See In re Simasko Prod. Co., 47 B.R. 444, 449 (Bankr. D. Colo. 1985) (“[D]iscretion to act with regard to business planning activities is at the heart of the debtor’s power.”) (citations omitted).

23. As this Court has found, to determine whether the business judgment standard is met, a court is “required to examine whether a reasonable business person would make a similar decision under similar circumstances.” In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006). The Debtor’s decision to enter into the DIP Facility satisfies this standard.

24. As discussed above, the DIP Facility is necessary to preserve the value of the Debtors’ estates. Specifically, the DIP Facility will allow the Debtors to conduct their operations, pay their obligations to their employees, and administer the Chapter 11 Cases. Moreover, the availability under the DIP Facility will provide the Debtors with the time they need to implement a sale and marketing process that will maximize the value of their solar development projects. The Debtors will be able to use this time to continue to negotiate a stalking horse agreement (or agreements) for the sale of their solar projects and to propose and, to the extent authorized by this Court, implement procedures that are designed to promote a competitive sale process with respect to their solar power plant development projects, that will result in the highest and best offer for the Debtors’ assets. Without the benefit of the DIP Facility, the Debtors will suffer irreparable harm as they will be unable to satisfy their immediate operational and contractual obligations, which would lead to a certain erosion of the going-concern value for the Debtors’ assets for the reasons set forth in the First Day Declaration.

3. The DIP Facility Terms are Fair, Reasonable and Appropriate.

25. The proposed terms of the DIP Facility Agreement and the other DIP Facility Documents are fair, reasonable, and adequate under the circumstances.

26. As discussed more fully above, the Debtors made concerted, good-faith efforts to obtain credit on the most favorable terms available in the market, notwithstanding the

short period of time to generate liquidity following the collapse of the SHAG transaction and the imminent obligations coming due in the first week of April 2012. No other lender was willing to provide the funding necessary to meet the Debtors' immediate financial obligations and fund the preservation of the Debtors' going-concern value and marketing process. Moreover, no other entity offered any financing opportunities to the Debtors, let alone financing on terms more favorable than those provided in the DIP Facility or within the time permitted. Against this backdrop, the Debtors and their advisors carefully evaluated the proposed financing offered by the DIP Facility and engaged in arm's-length negotiations with the DIP Lender. Ultimately, the Debtors, exercising their sound business judgment, agreed to the DIP Facility as the proposal best suited to the Debtors' needs.

27. To further illustrate that the terms are fair, reasonable and adequate, the proposed DIP Facility provides that the security interests and administrative expense claims granted to the DIP Lenders are subject to the Carve-Out. In Ames Dep't Stores, the court found that such "carve-outs" are not only reasonable but are necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. Ames Dep't Stores, 115 B.R. at 40; accord General Growth, 412 B.R. at 125.

28. Likewise, the various fees and charges required under the DIP Facility are customary, and approval thereof is appropriate. All of the fees and charges were the subject of substantial arm's-length negotiation, and absent approval and payment of such fees and charges, the DIP Lenders would not enter into the DIP Facility and extend the credit provided for thereunder. Courts routinely authorize material lender incentives beyond the explicit liens and other rights specified in Section 364 of the Bankruptcy Code. See, e.g., In re Defender Drug

Stores, Inc., 145 B.R. 312, 316 (9th Cir. B.A.P. 1992) (authorizing credit arrangement under Section 364, including a lender “enhancement fee”).

29. Accordingly, the terms of the DIP Facility are fair, reasonable and adequate, and the DIP Lenders under the DIP Facility should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of such facility.

B. Interim Approval Should Be Granted

30. Bankruptcy Rules 4001(c)(2) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors’ estates. See Fed.R.Bankr.P. 4001(c)(2).

31. The Debtors request that the Court authorize the Debtor, on an interim basis pending the Final Hearing, to borrow under the DIP Facility in an amount to be determined, inclusive of the up to \$18.4 million to be borrowed for purposes of providing security for the issuance of the PT Security Letter of Credit. As discussed above, this relief will enable the Debtors to operate their businesses in a manner that will permit them to preserve and maximize value and thereby avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing. Absent approval of the interim borrowing under the DIP Facility, the Debtors’ businesses would suffer immediate and irreparable harm.

C. Scheduling of Final Hearing

32. The Debtors further respectfully request that the Court set a date and time for the Final Hearing to consider the entry of a Final Order approving the relief sought in this Motion no later than twenty-one (21) days after the date of entry of the Interim Order since

pursuant to the DIP Credit Agreement an Event of Default will occur thereunder if the Final Order is not entered within twenty-one (21) days after the entry of the Interim Order, including without limitation final court approval of the Debtors' borrowings of up to \$22.3 million under the DIP Facility.

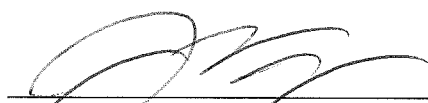
Notice

33. No trustee, examiner, or Committee has been appointed in the Chapter 11 Cases. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; and (e) counsel to the Proposed DIP Lender. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

WHEREFORE, the Debtors respectfully request that the Court (i) enter an Interim Order authorizing the Debtors to borrow an amount to be determined on an interim basis pursuant to the terms of the proposed Interim Order, (ii) schedule a Final Hearing on this Motion, (iii) after notice and an opportunity for a hearing, enter a Final Order authorizing the Debtors to borrow up to \$22.3 million pursuant to the terms of the DIP Facility, and (iv) grant such other and further relief as is appropriate.

Dated: April 2, 2012
Wilmington, Delaware

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